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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 974

In the Matter of

DIANA KEARNY POWELL

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered October 4, 1967 disbarring Petitioner from the practice of law before that Court, and Order denying Motion to set aside Order of Disbarment, entered October 25, 1967.

OPINIONS BELOW

Order of Disbarment in the United States Court of Appeals for the District of Columbia Circuit, in the matter of Diana Kearny Powell, Disbarment No. 108, was entered October 4, 1967, without opinion, and is not yet reported.

JURISDICTION

Jurisdiction is under 28 U.S.C. 1254(1).

Review is sought of the judgment of Disbarment of the United States Court of Appeals for the District of Columbia Circuit, entered October 4, 1967 (13a), Motion to Set Aside (13a) denied by Order entered October 25, 1967 (15a), on Constitutional and common-law grounds, and on the grounds it is in conflict with prior decisions of Courts of Appeals generally and of this Court. The Constitutional questions were raised in the first pleadings filed by Respondent-petitioner, and have not been answered.

QUESTIONS PRESENTED

The questions presented are:

1. Whether a Judgment of Disbarment entered by a United States Court of Appeals in an original proceeding, without an opportunity to produce witnesses and to be heard on oral argument, after demand therefor, and without confrontation by witnesses against respondent, and without opinion or statements, deprives Respondent of a valuable right without due process of law, and of the equal protection of the law, in violation of Amendments 5, 6, 9, and 14 of the Constitution of the United States.

2. Whether personal involvement of members of Court entering Order of Disbarment deprives Respondent of due process of law and the right to a fair trial by an impartial tribunal, in violation of Amendments 5, 6, 9 and 14 of the Constitution.

3. Whether an Order of Disbarment entered without comment, in the complete absence of countervailing evidence to overcome Petitioner-respondent's extensively documented showing of innocence of misconduct, violates rights protected by Amendments 5, 6, 9, and 14 of the Constitution.

4. Whether disbarment entered for the sole purpose of discrediting a formal complaint corroborated by documen-

tation, addressed by Petitioner-respondent to the Attorney General and alleging corruption in certain members of the bar and judiciary, violates rights of petition and free speech protected by Amendment One of the Constitution of the United States.

CONSTITUTIONAL AMENDMENTS AND RULES INVOLVED

Constitution of the United States:

Article 1: Congress shall make no law . . . or abridging the freedom of speech, or of the press; or the right of the people to assemble, and to petition the government for a redress of grievances.

Article 5: No person shall . . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article 9: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article 14: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Canons of Professional Ethics:

Canon 1: The duty of the Lawyer to the Courts. It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of

its supreme importance. . . . Whenever there is proper ground for serious complaint of a judicial officer, it is *the right and duty* of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

STATEMENT OF THE CASE

An Order to Show Cause why Petitioner-respondent should not be disbarred from the practice of law before the United States Court of Appeals for the District of Columbia Circuit, a United States Court having original jurisdiction of membership in its bar, issued June 15, 1967 (1a), stating disbarment in the United States District Court for the District of Columbia. Motion to Set Aside Suspension was filed June 20, 1967 (2a) alleging violation of Constitutional rights, and denied by Order entered July 13, 1967 (5a). Answer to the Order to Show Cause was filed July 24, 1967 (5a) alleging violation of Constitutional rights. Disbarment was entered October 4, 1967 (13a), without opinion. Motion to Set Aside Order of Disbarment, filed October 6, 1967 (13a), was denied by Order entered October 25, 1967 (15a).

The sole ground stated in the Order to Show Cause was certification of disbarment in the United States District Court for the District of Columbia, entered April 7, 1966. This disbarment was duly appealed, and petition to this Court for review of affirmation was denied, *Powell* v. *Committee on Admissions and Grievances*, 87 S. Ct. 1487, 386 U.S. 1035. Reconsideration was denied. Violation of Constitutional rights and documented evidence that the Judgment was predicated on perjured testimony and fraud was presented in defense, and was neither answered nor overcome by countervailing evidence. Motion for reinstatement in the District Court, filed June 20, 1967, was denied by Order entered June 23, 1967. Appeal noted July 7, 1967,

and duly docketed, was argued December 15, 1967, and is now pending in the United States Court of Appeals for the District of Columbia Circuit. (Appeal No. 21,220).

Petitioner-respondent Diana Kearny Powell has maintained at all times that her basic constitutional and common-law rights under Amendments 1, 5 and other clauses of the Constitution of the United States, have been violated by disbarment, and that she has acted in the highest traditions of professional ethics in making the formal complaint to the Attorney General of criminal fraud, perpetrated by certain members of the bar and certain judges, which formal Complaint made by her to the Attorney General was the sole ground for her disbarment by the District Court.

SUMMARY OF ARGUMENT

This Court has jurisdiction to review the case in its capacity of supervision of federal courts, and of violation of Constitutional rights of due process, equal protection of the laws, and freedoms under Amendment 1 of free speech and petition. It has the obligation to correct a shocking miscarriage of justice, and to prevent the use of the courts as vehicles of personal vindictiveness and to perpetrate fraud. The disbarment violates rights of due process and equal protection of the law, upheld in numerous cases, including use of disbarment to interfere with due process. The disbarment is in conflict with rulings of this Court, and of Courts of Appeal generally. The disbarment was entered without the opportunity for a trial on the merits, and deprives Petitioner of rights of petition and free speech, specifically to petition the Attorney General for redress of a crime, by use of disbarment to suppress and discredit evidence of fraud on the Court committed by those falsely accusing Petitioner of misconduct.

ARGUMENT

1. This Court has jurisdiction to review this case.

This Court has jurisdiction to review this disbarment as an abuse of discretion and deprivation of basic rights. *Randall* v. *Brigham,* 74 U.S. 523, 7 Wall 523, 19 L. Ed. (U.S. Mass. 1860). It has jurisdiction where the action of the lower courts, as in the instant case, is flagrantly improper and irregular. *Ex parte Burr,* 22 U.S. 529, 9 Wheat. 529, 6 L. Ed. 152 (U. S. Dist. Col. 1824). Although violation of rights of "due process", "equal protection of the law", and right of petition protected by the Constitution are involved in this decision, (see below), this Court may have jurisdiction to review this disbarment involving deprivation of basic rights, even though not embodied in the concept of "due process." *Fay* v. *People of State of New York,* 67 S. Ct. 1613, 332 U.S. 261, 91 L. Ed. 2043, rehearing denied, 68 S. Ct. 27, 332 U.S. 784, 92 L. Ed. 367.

2. This Court has obligation to review this case to prevent shocking miscarriage of justice.

This Court has the unqualified obligation to review this case to prevent a shocking miscarriage of justice. Personal rights are entitled to protection of the courts, and to hold otherwise would be to deny rights of due process. *Fulton* v. *Bekucke,* 106 F. Supp. 157, reversed 199 F. 2d 471 (D.C. Ill. 1952). Petitioner-Respondent is entitled to hold the office of attorney during good behavior. She has been deprived of that right without trial for which she made demand (5a), and without an iota of evidence or cause shown (15a), by a Court which plainly had prejudged, without consideration of the matters of defense and showing of unqualified conformity with the highest standards of good behavior on the part of Petitioner-Respondent. (5-12a).

In *Galpin* v. *Page,* 18 Wall 350, 368, 369, 21 L. Ed. 959, Mr. Justice Field of this Court characterized such procedure as "judicial usurpation." In the words of John Marshall

in his *Debates* in the Virginia Convention, 1829-1831, pages 616, 619;

> Advert, Sir, to the duties of a Judge. He has to pass between the Government and the man which that Government is presenting, between the most powerful individual in the community, and the poorest and most unpopular. It is of the last importance, that in the exercise of those duties, he should observe the utmost fairness. Need I press the necessity of this? Does not every man feel that his own personal security and the security of his property depends on that fairness? The Judicial Department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not to the last degree important that he should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience? . . . I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt, or a dependent Judiciary.

3. This disbarment violates rights of "due process" and "fair trial" protected by the Constitution.

This Court is by definition the guardian of rights of "due process" (p. 3) and fair trial (p. 3) protected by the Constitution, Amendments 5, 9, 14. In that capacity, defined in Article III of the Constitution, it has taken jurisdiction and has declared that it has an obligation to review a case to correct a shocking denial of basic rights of due process. A human being has an inherent right to due process of law. *Burns* v. *Lovett,* 262 F. 2d 335, 91 U. S. App. D. C. 208, affirmed *Burns* v. *Wilson,* 73 S. Ct. 1045, 346 U.S. 137, 97 L. Ed. 1508, rehearing denied 74 S. Ct. 3, 346 U.S. 844, 98 L. Ed. 363 (C.A.D.C. 1953).

This Court has held that a State may not, by invoking the power to regulate professional conduct of attorneys, infringe on rights protected by the Constitution. *Brotherhood of R.R. Trainmen* v. *Virginia, ex rel. Virginia State*

Bar, (Va. 1964) 84 S. Ct. 1113, 377 U.S. 1, 12 L. Ed. 2d 89, rehearing denied 84 S. Ct. 1625, 377 U.S. 960, 12 L. Ed. 2d 505. The disbarment sought to be reviewed and reversed was for the sole purpose of infringing Petitioner-Respondent's right to petition the Government for criminal action against certain parties guilty of embezzlement and fraud on the Court, to discredit the well-documented complaint and to suppress the evidence supporting it, although unrefuted and before the Court. *Powell* v. *Katzenbach,* 123 U.S. App. D.C. 250, 356 F. 2d 234, certiorari denied 384 U.S. 906, rehearing denied 384 U.S. 967 (1966). (See Amendment 1)

The 5th and 14th Amendments are designed to protect the individual from invasion of his rights, privileges and immunities by the federal and state governments respectively, including the District of Columbia. *Schatte* v. *International Alliance of Theatrical Stage Employees, et al.,* 70 F. Supp. 1008, affd. 165 F. 2d 216, cer. den. 68 S. Ct. 1018, 334 U.S. 812, 82 L. Ed. 1743 (D. C. Cal. 1947); *Hirsh* v. *Block,* 267 F. 614, 50 App. D. C. 56, 11 A.L.R. 1238, cer. den. *Block* v. *Hirsh,* 41 S. Ct. 13, 254 U.S. 640, 65 L. Ed. 452, revd. 1921, 41 S. Ct. 458, 256 U.S. 135, 65 L. Ed. 665, 16 A.L.R. 165.

The judicial department of Government is necessarily governed in the exercise of its functions by the rule of due process of law, *Hovey* v. *Elliott,* (N.Y. 1897), 17 S. Ct. 841, 167 U.S. 409, 42 L. Ed. 215, and judicial judgments are not to be based upon the idiosyncrasies of merely personal judgment. *Leland* v. *State of Oregon,* 72 S. Ct. 1002, 343 U.S. 790, 96 L. Ed. 1302, rehrg. den. 73 S. Ct. 4, 344 U.S. 848, 97 L. Ed. 659 (U.S. Or. 1952).

"Due process" is secured by laws operating on all alike and not subjecting individuals to arbitrary exercise of powers of government, unrestrained by established principles of private right and distributive justice. *Sexton* v.

Barry, 233 F. 2d 220, cer. den. 77 S. Ct. 94, 332 U.S. 870, 1 L. Ed. 2d 76 (CA Ohio 1956); *Hagar* v. *Reclamation Dist. No. 108*, 4 S. Ct. 663, 111 U.S. 701, 28 L. Ed. 569, affd. C. C. *Reclamation Dist. No. 108* v. *Hagar*, 4 F. 566.

Equal protection of the laws is an even more explicit right. *Bolling* v. *Sharpe*, 74 S. Ct. 693, 347 U.S. 497, 98 L. Ed. 884, supplementing *Brown* v. *Board of Ed. of Topeka, Kans.*, 75 S. Ct. 753, 349 U.S. 794, 99 L. Ed. 1083. The necessity of an opportunity to be heard is among the immutable principles of justice which inhere in the very idea of free government. Denial of this basic right in the instant case, in the words of the Court in *Holden* v. *Hardy*, 169 U.S. 366, 389, 42 L. Ed. 780, 790, 18 S. Ct. 383, citing *Galpin* v. *Page, supra*, marks the disbarment as wanting in

> . . . all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered.

4. This disbarment is in conflict with rulings of United States Courts of Appeal generally.

The right to due process of law applies to the right to continue in the practice of law. If one holds the prescribed qualifications, he must be admitted to practice law before the Court as a matter of right, and the attorney having once acquired that license, can only be deprived of it through judicial exercise of due process. *Dillon* v. *United States* (D. C. Or. 1964) 280 F. Supp. 487, reversed on other grounds 346 F. 2d 633; *In re Bennethum*, (D. C. Del. 1961) 196 F. Supp. 541. The opportunity to produce evidence and interrogate witnesses must be afforded. *U.S.* v. *Hicks*, 37 F. 2d 289 (C.C.A. Cal. 1930).

The United States Court of Appeals for the District of Columbia Circuit, almost simultaneously, upheld disbarment, *In the matter of Ewers*, No. 106, May 4, 1967, citing *In re Quimby*, 123 U.S. App. D.C. 273, 359 F. 2d 257 (1966), notwithstanding reinstatement in the District Court,

for embezzling trust funds, misconduct comparable to that about which Petitioner-respondent in the instant case had made the Complaint to the Attorney General, for which she was disbarred. The incongruity of reinstating the attorney who had committed a crime, at the same time disbarring an attorney who had submitted a formal Complaint to a proper Government agency reporting a similar crime, so shocks the conscience as to seem almost incredible, were the irrefutable facts not in plain view. *Powell* v. *Katzenbach, supra.*

Further, no misconduct was alleged, or could be, in the United States Court of Appeals for the District of Columbia Circuit, to support the disbarment in that Court, a matter which concerned only that Court. *In re Ulmer,* 208 F. 461 (D.C. Ohio 1913); *In re Noell,* 21 F. Supp. 379 (D.C. Mo. 1938). This is distinguished from cases in which the disbarred attorney committed criminal acts or frauds on the Court, *Curtis* v. *Whiteford,* 59 App. D.C. 320; *In the matter of Ewers,* Disbarment No. 106, May 6, 1967 U.S. App. D.C.; or committed a contempt of court, or attempted to obstruct justice. *In re Ades,* 6 F. Supp. 467; *Re Watt* (D.C. Pa.) 149 F. 1009. In fact, the persons making the charges against Petitioner-Respondent were the ones whom the record showed to be guilty of the crimes of obstructing justice and fraud on the Court. See also *United States* v. *Manton,* 107 F. 2d 834, 309 U.S. 664; *Thomas* v. *Ogilby,* 59 App. D.C. 382, 44 F. 2d 890.

Petitioner-respondent is entitled to the protection of this Court from the unwarranted deprivation of her right to practice law during good behavior, and to hold otherwise is to deny her right to due process. *Fulton* v. *Bekucke,* 106 F. Supp. 157, reversed 199 F. 2d 471, (D.C. Ill. 1952). There cannot exist under the American flag any government authority untrammeled by requirements of due process as guaranteed by the Federal Constitution. *Mora* v. *Mejias,* 206 F. 2d 377 (C.A. Puerto Rico, 1953).

5. Disbarment for submitting a Complaint of a crime to the Department of Justice deprives Petitioner-Respondent of the right to free speech and petition in violation of Amendment 1 of the Constitution.

Freedom of speech is freedom to tell the truth and comment fairly on facts. *Sweeney* v. *Schenectady Union Publishing Co.* (C.C.A. N.Y. 1941) 122 F. 2d 288, affd. 62 S. Ct. 1031, 316 U.S. 642, 86 L. Ed. 1727, rehearing denied 62 S. Ct. 1266, 316 U.S. 710, 86 L. Ed. 1776. The record fully supports Petitioner-respondent in her Complaint to the Attorney General charging certain individuals with fraud. (6a-9a) The right and duty to inform proper officials of crime is fundamental to orderly Government. In *Near* v. *Minnesota,* 283 U.S. 697, 73 L. Ed. 1357, 51 S. Ct. R. 625 (1931), this Court stated:

> . . . the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasize the need of a vigilant and courageous press . . .

How much more fundamental is the basic right of the individual who is the victim of a crime of conspiracy and corruption to report it to Government and to demand the protection and cooperation of that Government, and most particularly of the Department of Justice and of the Courts. The use of disbarment to suppress such a fundamental right is equal to, if not more dangerous, than suppression of freedom of the press. *Brotherhood of R.R. Trainmen* v. *Virginia, ex rel. Virginia State Bar, supra.*

Petitioner-Respondent acted in the highest traditions of professional ethics and loyalty to duty in exposing corruption in the profession and in the Court itself. (*Canons of*

Professional Ethics.) This Court held, in *Ex parte Bradley,* 7 Wall (U.S.) 364, 19 L. Ed. 214:

> In no case has it been considered that the power to disbar is an arbitrary or despotic one to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility. A sound judicial discretion controls the exercise of the power so that the right and independence of the bar will be scrupulously guarded and maintained by the court, to the same extent as it maintains the rights and dignity of the court itself.

That right to be protected against duress in the practice of law includes also the rights of petition protected by Amendment 1 that is a fundamental incident of the practice of law and its *raison d'être.* The right and duty of citizenship to report a conspiracy to defraud the United States through obstructing justice through deceit, craft, and trickery, are as basic as the laws declaring such conduct criminal. *Hammerschmidt* v. *United States,* 265 U.S. 182, 188.

Cases cited in earlier proceedings leading to this disbarment in fact sustain Petitioner-respondent. *Booth et al.* v. *Fletcher,* 69 App. D.C. 351, 101 F. 2d 676, cert. denied 59 S. Ct. 835, 307 U.S. 628, 83 L. Ed. 1511, for example, predicates the disbarment upon the falsity of the statements and stresses that the respect due to courts must rest, first of all, upon actual integrity. It is pointed out that the record shows Petitioner-Respondent herein based her Complaint of crime solidly upon the admitted record, while the charges against her were perjured and in conflict with the facts. *In re Ades, supra,* citing earlier cases, stresses that disbarment must rest upon a showing of moral turpitude evinced by the alleged misconduct. *Ex parte Wall,* 107 U.S. 265, 27 L. Ed. 552, 2 S. Ct. 569, citing numerous cases, recites:

> "... Disbarment is the extreme measure of discipline and should be resorted to only in cases where the lawyer demonstrates an attitude or course of conduct wholly inconsistent with approved professional standards. To disbar it should be clear that he is one who

> should never be at the bar. . . . it should be ordered only when the misconduct of the attorney may properly be characterized as gross. . . . Further, it is said that an attorney should be disbarred or suspended only where his continuance in practice will be subversive of the proper administration of justice, or incompatible with a proper respect of the court for itself or a proper regard for the integity of the profession.

Bradley v. *Fisher,* 13 Wall (U.S.) 335, 20 L. Ed. 646, in which the disbarred attorney committed a physical attack on the judge to intimidate him, rests upon the attempt to coerce the judge.

The case relied on most heavily, *Duke* v. *Committee on Grievances of the Supreme Court of D. C.,* (1936) 65 App. D.C. 284, 82 F. 2d 890, cert. denied, 56 S. Ct. 751, 298 U.S. 662, 80 L. Ed. 1387, in fact fully supports Petitioner-respondent by showing the misconduct is not in her, but in those who committed perjury and made misrepresentations to the Court to falsely accuse her, limiting the question as to whether the respondent be a fit person to remain a member of the bar of the court, stating:

> . . . He [the attorney] has no right to attempt to cast foul and unfounded aspersions upon the character and conduct of his brother members of the bar, any more than he has to asperse and defame, *without justification,* the character and motives of the judge upon the bench. *Especially is he without warrant in an attempt to make the records of the courts, from the lowest to the highest, vehicles of malicious scandal and libel of any* member of the bar. Upon any other principle for the government of the bar, it would be impossible to conduct business with decorum and with due regard to the orderly proprieties of a court of justice.

The Court might well have been ruling on the instant case when it continued in *Duke:*

> . . . To tolerate such a precedent as this case would make would subject any attorney, in the performance

of his duty, and upon any unfounded pretense supposed to be available to his adversary, to the most unjust and outrageous imputations upon his character and conduct. The bar are entitled to be protected against such abuse of privileges by any of its brother members.

CONCLUSION

WHEREFORE, Petitioner respectfully prays that Writ of Certiorari issue to the United States Court of Appeals for the District of Columbia Circuit for review of the Judgment of Disbarment.

That this Court exercise its power of supervision of United States Courts to investigate the use of intimidation by Disbarment to suppress the basic right and duty to report corruption and crime in prominent members of the bar and by members of the Court.

DIANA KEARNY POWELL,
Petitioner
1500 Massachusetts Ave., N. W.
Washington, D. C. 20005
223-0640

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APPENDIX

(filed June 15, 1967)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1966

Misc. No. 54-65

In the Matter of:
DIANA KEARNY POWELL } Disbarment No. 108

Before: Bazelon, Chief Judge, and Danaher, Burger, Wright, McGowan, Tamm, Leventhal and Robinson, Circuit Judges, in Chambers.

Order to Show Cause

It having been shown to the court by a certified copy of an order of the United States District Court for the District of Columbia that on April 7, 1966, after a hearing upon charges filed by its Committee on Admissions and Grievances the District Court entered an order disbarring Diana Kearny Powell from further practice of law before the bar of the District Court and prohibited her thenceforth from holding herself out to be an attorney at law in the District of Columbia, it is, therefore, pursuant to Rule 7(e)(1) of this court,

ORDERED by the court that Diana Kearny Powell, a member of the bar of this court, is hereby suspended from the practice of law before this court, and that, unless she shows good cause to the contrary within forty (40) days hereof, she shall stand indefinitely suspended until further order of this court.

Per Curiam.

Dated: June 15, 1967

(Filed June 20, 1967)

Motion to Set Aside Suspension From Practice Pending Answer to Order to Show Cause

Comes now Respondent Diana Kearny Powell and respectfully moves this Honorable Court to set aside the Order of Suspension dated June 15, 1967, pending opportunity to prepare an Answer to the Order to Show Cause, and as grounds therefor states:

1. Disbarment of Respondent in the United States District Court for the District of Columbia on April 7, 1966, and its affirmance in this Court, dated January 12, 1967, on appeal, were each based upon misapprehension of facts admitted and patent in the record: that is, the Court found as a matter of fact that Respondent's formal Complaint in *Diana Kearny Powell* v. *Nicholas Katzenbach, United Staes Attorney Generdl,* —— U.S. App. D.C. ——, —— F.2d ——, —— U.S. ——, cer. Den. —— U.S. ——) seeking criminal action against a trustee and others for conversion of trust funds by patent misrepresentations of fact and law, and specifically, the implication of two judges by corroborating the misrepresentations and condoning the embezzlement, was false and without foundation in fact, whereas each and every statement made by Diana Kearny Powell was fully supported by the record set forth in her trial brief in fifty-two pages of court records (Appendix A) and twenty pages of analysis of the foundation of the charges, (Appendix B) comparing the statements of the judges with the record and with the law to show that the statements could not have been made in good faith and through honest error. The question was not whether the statement of the judges was privileged or whether they represented sufficient intention to support a criminal charge, but whether Respondent Diana Kearny Powell had probable cause to believe that they should be investigated by the Attorney General as a fraud upon the

United States in the exercise of their judicial duties, that is,/to render impartial justice, free of prejudice or partiality, and predicated upon the undisputed facts of record. In rendering its judgment of Disbarment, and in the affirmance of the judgment, that Respondent's Complaint to the Attorney General, a privileged communication, was totally without foundation, the Court was in effect excluding from its consideration seventy-two pages of evidence submitted by Respondent beside numerous other references to the records of the Court, all matters of record and undisputed.

2. The United States District Court has informally indicated its willingness to reconsider reinstatement. Application for reinstatement is being made concurrently with this defense, and postponed pending disposition of the Petition to the Supreme Court for review, and of the final disposition of the accounting of Diana Kearny Powell's Committeeship in Mental Health 1383-62, In the Matter of Bernard Livingston. Respondent Diana Kearny Powell is happy to invite investigation and comparison of the record of how she handles a trust estate.

3. This Court has already acted upon the Complaint in *Powell* v. *Katzenbach, supra,* with the opportunity to review the point as to whether or not it was false and scandalous, as alleged in the disbarment proceeding. In that case this Court acted solely upon the question of whether mandamus would lie against the Attorney General for the purpose of compelling criminal prosecution under 68 Stat. 998 (1954), 5 U.S.C. sec. 311a (1958), stating, "The complaint in its entirety fails to state a cause of action, and we thus need not reach the issue as to whether the striking of two of its paragraphs was warranted."

4. Respondent, Diana Kearny Powell has an absolute right to unconditional and unqualified reinstatement. This Court, in affirming the Judgment of Disbarment, specified

that affirmance was not to be considered a bar to reinstatement upon an appropriate showing.

5. Respondent is entitled to unconditional and unqualified reinstatement. The condition suggested by counsel for the Committee that she "recant", is tantamount to using disbarment as a means of blackmail and extortion, and offering reinstatement as a bribe to induce her to lie to the Court to compound the felonious embezzlement and fraud of the trustee that were the subject of Respondent's Complaint to the Attorney General.

6. This Court has recently held that conversion of trust property by a fiduciary was grounds for disbarment. *In re Quimby*, 123 U.S. App. D.C. 273, 359 F.2d 257 (1966), and *In the Matter of Ewers*, U.S. App. D.C., Disbarment No. 106, May 4, 1967. Judge Burger rendered a concurring opinion in the latter case. Respondent directs attention to the disparity of treatment by which attorneys guilty of the crime of embezzlement are excused or merely suspended, and trusts that Judge Burger and every member of the Court would want to correct the grave injustice that has been done her, not only in allowing the trustee bank to convert trust funds with impunity, but in the even graver wrong of disbarment for the sole reason that she made a complaint of a well-authenticated crime to the Attorney General.

/s/ DIANA KEARNY POWELL,
Diana Kearny Powell, Respondent
1500 Massachusetts Ave., N. W.
Washington, D. C. 20005

(Certificate)

(filed July 13, 1967)

Before Bazelon, Chief Judge; and Danaher, Wright, Tamm, Leventhal, and Robinson, Circuit Judges, in Chambers

Order

Upon consideration of petitioner's "motion to set aside suspension from practice pending answer to order to show cause", it is

ORDERED, by the Court, that the motion is denied.

Per Curiam.

(filed July 24, 1967)

Answer to Order to Show Cause

Respondent Diana Kearny Powell respectfully answers the Order of the United States Court of Appeals for the District of Columbia Circuit entered June 15, 1967, to show cause why she should not be disbarred or suspended by showing to this Court that she has committed no act to justify disbarment, but on the contrary has at all times maintained the highest standards of professional ethics and good conduct, and that she has acted in the best interest of the proper administration of justice. Respondent submits that her disbarment will cause irreparable damage to the public respect for this Court as a vehicle of justice, and respectfully prays for full hearing and consideration by the Court en banc, with the right to subpoena and examine witnesses, to submit additional evidence, and for oral argument.

In support of this Answer, Respondent shows to the Court as follows:

1. RESPONDENT DIANA KEARNY POWELL HAS COMMITTED NO ACT TO JUSTIFY HER DISBARMENT IN THIS OR IN ANY OTHER COURT.

Respondent has acted at all times in the highest traditions of professional ethics and propriety, and especially has sacrificed her personal interests to defend, at the high cost of being charged with perjury and professional chicanery, the integrity of the Court and of the administration of justice against the corruption which the record in this case reveals to be a fact.

Respondent categorically denies that any written or oral statement that she has made in any way is knowingly false or without foundation. To the best of her ability, she has promptly admitted and corrected the occasional inadvertent error upon discovering it, as she would expect the Court and opposing counsel to do.

Respondent has submitted proof which shows beyond a shadow of a doubt and to a mathematical certainty that the accusations of misconduct which she made against the National Savings and Trust Company as trustee, Henry Paige and Benjamin Dulany as lawyers submitting knowingly spurious claims against the trust, and Judge Holtzoff and Judge Burger in aiding the fraud of the trustee bank, were fully supported and justified by the undisputed record.

This undisputed record, admitted into evidence and judically noticed by the three-judge Court at the disbarment proceeding, Miscellaneous No. 54-65, is incorporated in Respondent's Brief and Appendix, was before the District Court, and of this Court on appeal. *Powell* v. *Committee on Adm. & Grievances*, —— U.S. App. D.C. ——, —— F.2d ——, 87 S. Ct. 1487, 386 U.S. 1035. This original "Respondent's Brief and Appendix" are made a part hereof as EXHIBIT A.

This brief spells out in detail particular false statements of the judges and the record proving them to be false. (App. B). It further notes numerous instances in which the judges refused to correct the error when it was shown to them. In contrast, neither the Committee, the Court, nor the persons accused have been able to produce one single instance of any statement of Respondent that does not accurately state the record. The disbarment has of necessity been founded upon sweeping generalities and conclusions without any showing of evidence to support the conclusions of misconduct by Respondent Diana Kearny Powell, since no such evidence exists. This has been combined with total disregard of the evidence, and broad denials of the existence of indisputable facts, spread before the eyes of those who smugly accuse Respondent of misconduct in making false and unfounded charges. This, Respondent submits, is the essence of corruption. It would shock the conscience of a gangster, but is condoned, supported, and approved by this Court, and by the Committee charged with the duty of keeping the legal profession pure and unsullied.

Respondent shows, in addition to the Order of Disbarment itself, the Reply Brief submitted by Respondent as Appellant in the related case in this Court, *Powell* v. *Holtzoff*, (No. 20,544), —— U.S. App. D.C. ——, —— F. 2d ——, 384 U.S. 938, 1027, 86 S. Ct. 1461, 1919. (petition combined with *Powell* v. *National Savings and Trust Company*), in which fundamental facts are shown to be misstated by Judge Holtzoff in his Answer, defended by the United States Attorney in an *ultra vires* act where it should be prosecuting him for perjury and obstruction of justice. Reply Brief for Appellant in *Powell* v. *Holtzoff* (No. 20,544), is made a part hereof as EXHIBIT B.

Respondent applied for reinstatement in the United States District Court, which was denied because she would

not perjure herself and deceive the Court by making a false denial of the record supporting her accusations against the bank, the two lawyers, and the two judges. This denial of reinstatement now pending appeal, attempts to blackmail Respondent into committing the very misconduct she is accused of, making false and unfounded statements to the Court. Requests for admissions of Fact and Interrogatories addressed to the Committee on Admissions and Grievances were answered notwithstanding the pre-dated Order (June 23, 1967), which was received June 28, 1967. The Answers, arriving by mail several days later, did not fully respond to the questions, with no opportunity to apply to the District Court for an Order for the precise answers specified in the questions. Respondent submits that under these circumstances, evasion of the precise answers requested is an admission that no precise answer is possible. The Requests for Admissions of Fact and their Answers, and the Interrogatories and their Answers are incorporated herein as EXHIBITS C, D, E, and F.

Specifically, Respondent notes that the entire twenty pages of Appendix B of Respondent's Trial Brief (EXHIBIT A), a detailed but purely factual analysis of the misquotations by the two judges with cross-references to the record set out in Appendix A, is included in one sweeping allegation that it is without foundation, although Respondent counts approximately 156 specific references to the record, most of them by line, to support her allegations.

2. FACTS.

Respondent was disbarred in the United States District Court for the District of Columbia on April 7, 1966, because of a Complaint in the Nature of Mandamus which she addressed to the Attorney General. This complaint sought criminal action against a bank, two lawyers, and two judges for fraud upon an estate of which the bank had been

trustee. The written statement, couched in general terms, was fully supported in every particular by Court records, which even showed the wrongful intent, evidenced by repeated refusals to correct patent misstatements of the record, after notice of the error. This Complaint, dismissed on the ground mandamus would not lie against the Attorney General for a discretionary act, was taken to this Court and ultimately certiorari was denied by the Supreme Court. *Powell* v. *Katzenbach*, 123 U.S. App. D.C. 250, 359 F. 2d 234, 86 S. Ct. 1341, 1584, 384 U.S. 906, 967.

Disbarment, purportedly based solely on the statements regarding the two judges, was in fact being urged by associates of the Attorneys, known to have contacted Principal Assistant United States Attorney Charles T. Duncan, shortly thereafter appointed Corporation Counsel despite his admittedly having been involved in a somewhat similar incident concerning trust funds.

Disbarment was entered in the District Court and affirmed in this Court with obvious failure to give even cursory review of the evidence set out in the trial brief showing overwhelming support of Respondent's complaint. (EXHIBIT A) The details and arguments are already before the Court and are incorporated by reference.

Upon denial of petition for certiorari to the Supreme Court of the United States, *Powell* v. *Committee on Admissions and Grievances*, 87 S. Ct. 1487, 386 U.S. 1035, Respondent applied for reinstatement in accordance with the suggestion of this Court in affirming disbarment. (No. 20,181, not yet reported) This was arbitrarily denied, in Order received June 28, 1967, and pre-dated June 23, 1967.

3. Respondent Has Been Disbarred for the Act of Good Citizenship and Professional Responsibility of Reporting to Proper Authority Crime and Professional Corruption.

Respondent has been disbarred because she made a complaint to the Attorney General of a fully substantiated crime, as shown in the pleadings. The making of the Complaint was a moral and professional obligation in the highest tradition of loyalty to the legal profession and to the Court.

As a citizen, Respondent asks for scrutiny of this case in which she is punished by disbarment for the act of good citizenship in reporting crime. Respondent unqualifiedly maintains that it is her duty as a member of the Bar of the Court and in the interest of proper administration of justice to report criminal acts of which she has positive proof, regardless of the prestige and influence of the parties committing the crime, and without regard to threats and acts of retaliation against herself.

The city of Washington has become unbelievably corrupt. Citizens on all sides clamor in vain for law, honesty and justice. They are not deceived that the primary responsibility for the escalation of crime and corruption lies with the Courts and the legal profession. Day after day the good people of this city see robbery and violence condoned, the innocent victimized, the corrupt protected at all levels. Dope syndicates and organized crime operate openly under the eyes of the police, trusts are plundered with the connivance of the Court, and crime has become a qualification for honors and public office. The only act which is condemned as unforgivable is to expose the vice and crime and corruption that riddle this city from the slums to its highest officials.

This disbarment could not have been consummated except in this atmosphere of corruption, and of which it is the ultimate expression.

4. RESPONDENT AS A LITIGANT HAS AN UNQUALIFIED RIGHT TO DEMAND JUSTICE AND INTEGRITY IN THE COURT WITHOUT FEAR.

Respondent unqualifiedly maintains that she and every litigant has an absolute right to demand justice and integrity in the Court, and in each and every member of the Court. Justice and a fair review of the facts is not a favor to be granted or withheld at the whim of the judge. It is the duty of the Court to every litigant to administer justice according to law, to consider all the admitted evidence candidly and without prejudice, favoritism or influence. In defending this right, Respondent is upholding the highest interest of the Court itself as an instrument of the administration of justice against corruption within itself that amounts to fraud on the United States. *Braatelien* v. *United States*, 147 F. 2d 888 (1945); *United States* v. *Manton, et al.*, (2d Cir.) 107 F. 2d 834, *cert. den.*, 309 U.S. 664. Respondent and every litigant has an absolute right and positive duty to seek redress from the appropriate Government authority for flagrant abuse and violation of the right to justice.

In the afternoon of June 27, 1967, a man slipped into Respondent's apartment and attempted to kill her. This shocking experience seems almost beyond belief. To Respondent it is less shocking than this disbarment, that speaks loud and clear that the Court and Committee have so far departed from the universally accepted norms of right and wrong that they condone this blackmail to force suppression of a complaint of an authenticated crime. This country is truly in great trouble when the Courts entrusted with the most precious rights of people, like the whited sepulchres of Scripture, are concerned only with the self-delusional appearance of justice, while destroying the reality. Compare *In re Quimby*, 123 U.S. App. D.C. 273, 359 F. 2d 257 (1966), and *In the Matter of Ewers*, U.S. App. D.C. Disbarment No. 106, May 4, 1967.

Conclusion

It is the positive duty of this Court to Respondent, to itself, and to the Government of the United States to correct the grave injustice that it has committed.

Wherefore, Respondent respectfully prays this Court:

1. To grant her full reinstatement and restoration of her status as a member in good standing of its bar;

2. To correct all errors and misstatements in the record in this and related cases, occasioned by its errors;

3. To Order review and reinstatement in accordance with the record in the United States District Court.

4. For such other and further relief as to the Court seems just and proper.

/s/ Diana Kearny Powell
Diana Kearny Powell,
Respondent
1500 Massachusetts Avenue, N.W.
Washington, D. C. 20005

(Certificate Jurat)

(Filed Oct. 4, 1967)

Before: Bazelon, Chief Judge, and Danaher, Burger, Wright, McGowan, Tamm, Leventhal, and Robinson, Circuit Judges, in Chambers.

Order

On consideration of the answer of Diana Kearny Powell to this Court's order directing her to show cause why she should not be disbarred or suspended and of her Exhibits A and B appended thereto, and the Court en banc deeming her answer insufficient, it is

ORDERED by the Court en banc that Diana Kearny Powell is hereby disbarred from the practice of law before this Court, and the Clerk shall strike her name from the roll of attorneys admitted to practice before this Court.

Per Curiam

Dated: Oct. 4, 1967

Chief Judge Bazelon and Circuit Judge Burger did not participate in the foregoing order.

(Filed Oct. 6, 1967)

Motion to Set Aside Order of Disbarment

Respondent Diana Kearny Powell respectfully moves this Honorable Court to set aside the Order of Disbarment in the above-entitled cause entered October 4, 1967, and as grounds alleges error as follows:

1. The Order of Disbarment is defective in that it fails to state grounds for disbarment, or to show in what respect the Court considers Respondent's Answer to be insufficient. Respondent's Answer, duly filed, showed Motion for Reinstatement in the District Court was pending. This Motion, preliminary to this proceeding as removing the sole grounds stated in the Order to Show Cause, is as yet

undetermined in this Court on Appeal, No. 21,220, *Powell* v. *Committee on Admissions and Grievances,* consolidation having been denied by Order of this Court filed September 12, 1967. Both the Answer and the Appeal present evidence that the Disbarment was the product of a conspiracy to blackmail Respondent and to discredit her Complaint, based on irrebuttable evidence, against a bank, two attorneys, and two judges, of criminal fraud. Supporting the propriety of Respondent's Complaint against members of the legal profession involved in criminal fraud are *Canons of Professional Ethics,* Canon 1; *In re Quimby,* 123 U.S. App. D.C. 273, 359 F.2d 257; *In re Ewers,* U.S. App. D.C. Disbarment 106. Motion to consolidate was denied by Order filed September 12, 1967.

2. This Disbarment is invalid as premature. Respondent's Answer seeks as a right protected by Constitutional guaranties hearing by the Court *en banc.* This hearing has neither been granted nor denied. Constitution of the United States, Amendments Six, Nine.

3. Non-participation of Judges Bazelon and Burger deprive Respondent of a fair hearing and the right of confrontation guaranteed by various amendments to the Constitution. Non-participation by Judge Burger is particularly prejudicial, since it is peculiarly a duty of Judge Burger, in the interests of candor, the integrity of the Court, and minimum norms of justice, to review and correct patent misstatements and injustices for which he is responsible. Such action would not only exonerate Respondent from the charges of misconduct, but would exonerate him, Judge Burger, from bad faith and intent to aid fraud, and would open the door to the District Court, now bound by his decision, to make similar corrections, in accordance with the highest standards of judicial integrity. Oath of office, U.S.C.A. Title 28, Ch. 21, sec. 455, June 25, 1948, c. 646, 62 Stat. 907; *Bartel* v. *Riedinger,* 338 F.2d 61; *Scott* v. *State,* 323 S.W.2d 445.

4. Disbarment for a well-authenticated Complaint to the Attorney General violated Respondent's right to free speech and of petition protected by Amendment One of the Constitution of the United States.

WHEREFORE, Respondent Diana Kearny Powell respectfully prays that the Disbarment in the United States Court of Appeals for the District of Columbia Circuit be set aside and Repsondent restored to full status as a member of the Bar of this Court.

/s/ DIANA KEARNY POWELL
Diana Kearny Powell,
1500 Massachusetts Ave., N. W.
Washington, D. C. 20005
Respondent pro se

(Certificate/jurat)

(Filed Oct. 25, 1967)

Before: Bazelon, Chief Judge, and Danaher, Burger, Wright, McGowan, Tamm, Leventhal, and Robinson, Circuit Judges, in Chambers.

Order

Upon consideration of motion of Diana Kearny Powell to set aside the Order of Disbarment and upon all the pleadings and proceedings heretofore had herein, it is

ORDERED by the court that the motion to set aside the Order of Disbarment is hereby denied.

Per Curiam

Chief Judge Bazelon and Circuit Judges Danaher and Burger did not participate in the foregoing order.

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IN THE

Supreme Court of the United States

October Term, 1967

No. 974

In the Matter of

DIANA KEARNY POWELL

Petition for rehearing of Order denying Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

DIANA KEARNY POWELL

1500 Massachusetts Ave., N.W.
Washington, D.C. 20005

Petitioner pro se

IN THE

Supreme Court of the United States

October Term, 1967

No. 974

In the Matter of

DIANA KEARNY POWELL

Petition for rehearing of Order denying Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner Diana Kearny Powell respectfully prays for reconsideration of the Order entered the 17th day of June, 1968, denying petition for writ of certiorari in the above-entitled cause, and for a request by this Court directed to Respondent, the Chief Judge and associate Judges of the United States Court of Appeals for the District of Columbia Circuit, for a reply to this Petition for Rehearing, under Rule 58(2) and (3) of the Rules of this Court.

INTERVENING CIRCUMSTANCES AND GROUNDS NOT PREVIOUSLY PRESENTED

1. Record is necessary to proper consideration of Misc. 882, now pending.

The related case, Misc. 882, *In the Matter of Diana Kearny Powell,* relating to the disbarment proceedings before this Court, is pending in this Court. The record in this case is so closely related as to be inseparable, the grounds stated in the Order to show cause being solely disbarment in the United States Court of Appeals for the District of Columbia Circuit, which disbarment, in turn, stated no grounds except the disbarment in the United States District Court for the District of Columbia. While Petitioner continuously has maintained that the fact of disbarment, without showing of improper conduct, is insufficient, the fact that the original disbarment was the product of bias, influence peddling, and even blackmail to suppress Petitioner's Complaint of a crime, is also necessary.

2. Additional evidence has been established showing bias and prejudice by the Court to protect personal friends.

Additional competent evidence has come to light showing that the original complaint against Petitioner was the product of bias by the Court, and the wish to protect the prestige of personal friends and to win the favor of persons in positions of influence, without consideration of the facts of record. Petitioner cites the transcript of July 3, 1968, *Powell v. National Savings and Trust Company,* Civil Action No. 1307-68:

> ". . . You know who John E. Powell is? He was a very fine member of our Bar, a very excellent lawyer. He used to be a member of the Grievance Committee.

> I don't think he is dishonest or anything at all. I don't think he'd represent a dishonest client."

Petitioner submits that this admission that the decision of the Court is made upon the personal prestige of a member of the law firm involved in fraud is strong evidence that the disbarment of petitioner because she sought criminal prosecution of another associate of the same firm for deceptions and conflict of interest was also the product of bias and the exercise of personal influence and prestige, in disregard of the facts of record. Such a judgment of disbarment violates basic norms of justice, and Constitutional and common law rights to a fair and impartial trial.

3. Recent civil disorders pinpoint the urgency of maintaining the right to seek justice through legal channels of petition guaranteed by Amendment One of the Constitution and by the common law.

Petitioner has previously stressed, notably in the Answer to the Order to Show Cause in the disbarment in the Court of Appeals,[1] that she has been penalized for seeking redress for the serious wrongs committed against her through the legal channels of petition and complaint, supported by unopposed evidence of record.

Petitioner respectfully submits that continued disregard of basic justice in the instant case will add to the cause for disillusionment in our legal system by which less disciplined persons than Petitioner resort to violence for redress of wrongs, knowing that lawful petition is ignored.

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[1] Pet. 974, a10-a-11

CONCLUSION

WHEREFORE, Petitioner respectfully prays for reconsideration and granting of her Petition for Writ of Certiorari.

DIANA KEARNY POWELL

1500 Massachusetts Ave., N.W.
Washington, D.C. 20005

Petitioner pro se,

CERTIFICATE OF GOOD FAITH

I hereby certify that the foregoing Petition for Rehearing of the Petition for Writ of Certiorari in the above-entitled cause is presented in good faith and not for delay, and that it is restricted to intervening circumstances of substantial effect, or which to the extent that they were available to petitioner, were not previously presented.

Diana Kearny Powell